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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MOHAMMAD HASSAN DAIRI,

12 Plaintiff,

13 vs.

14 MICHAEL CHERTOFF, Secretary, et al.,

15 Defendant.

CASE NO. 07cv1014 JM(JMA)

ORDER GRANTING MOTION TO  
DISMISS

16 Defendants Michael Chertoff, Secretary of the Department of Homeland  
17 Security, Emilio Gonzalez, Director of the Bureau of Citizenship and Immigration  
18 Services (“USCIS”), and Alberto Gonzalez, Attorney General, move to dismiss the  
19 complaint for lack of subject matter jurisdiction or, alternatively, to remand the action  
20 to USCIS. Plaintiff Mohammad Hassan Dairi opposes the motion. Neither party  
21 requests oral argument and, pursuant to Local Rule 7.1(d)(1), the court finds this matter  
22 appropriate for decision without oral argument. For the reasons set forth below, the  
23 court dismisses the action for lack of subject matter jurisdiction.

24 **BACKGROUND**

25 On June 5, 2007 Plaintiff commenced the present action seeking relief in the  
26 nature of mandamus to compel Defendants to move forward with processing his  
27 application for naturalization. Plaintiff is a lawful permanent resident of the United  
28 States and is a citizen and native of Jordan. (Compl. ¶1). Plaintiff filed his first

1 application for naturalization in 2004 but subsequently withdrew that application. On  
 2 May 4, 2006 Plaintiff filed his second application for naturalization on Form N-400.  
 3 Plaintiff alleges that he made “countless” inquiries regarding the status of his  
 4 naturalization application and was informed “that his applications had been held up  
 5 because of some kind of ‘background’ investigation.” (Compl. 5).

6 Plaintiff alleges that the Government “had has ample opportunity to investigate  
 7 the ‘background’ of this Plaintiff.” (Compl. ¶6). Plaintiff also sets forth data from the  
 8 USCIS website indicating that the USCIS “is now processing for interview  
 9 naturalization applications that it received on or before October 12, 2006,” and that he  
 10 has not yet been interviewed. (Compl. ¶7). Plaintiff requests that Defendants be  
 11 compelled “to move forward with Plaintiff’s application for naturalization and schedule  
 12 him for interview.” (Compl. at p.3:18-19).

13 Defendants move to dismiss the complaint on the ground that mandamus relief  
 14 is unavailable as Plaintiff’s naturalization application is in the process of adjudication  
 15 and remains in the background investigation phase. Plaintiff opposes the motion.

## 16 DISCUSSION

17 Defendants challenge the subject matter of the court to entertain this action under  
 18 28 U.S.C. §1361 and move to dismiss the complaint pursuant to Rules 12(b)(1) and  
 19 (12(b)(6).<sup>1</sup> “Mandamus is an extraordinary remedy and is available to compel a federal  
 20 official to perform a duty only if: (1) the individual’s claim is clear and certain; (2) the  
 21 official’s duty is nondiscretionary, ministerial, and so plainly prescribed as to be free  
 22 from doubt, and (3) no other adequate remedy is available.” Kildare v. Saenz, 325 F.3d  
 23 1078, 1084 (9<sup>th</sup> Cir. 2003). The parties focus on the first and second elements.

24 Here, Defendants have satisfied their evidentiary burden to show that Plaintiff’s  
 25 application for naturalization is in the process of adjudication and therefore Plaintiff’s

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 27 <sup>1</sup> The parties are in general agreement that subject matter jurisdiction, if it exists at all, would  
 28 only be appropriate under the Mandamus Act, 28 U.S.C. §1361. The Mandamus Act vests the district  
 courts with original jurisdiction of “any action in the nature of mandamus to compel an officer or  
 employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 28  
 U.S.C. §1361.

1 claim is neither clear and certain nor one subject to nondiscretionary, ministerial duties.  
2 While Defendants have the nondiscretionary duty to adjudicate Plaintiff's application,  
3 the USCIS, the FBI, and other federal agencies have a great deal of discretion in how  
4 they process the Congressionally mandated background investigation. Defendants  
5 submit the declaration of Janaki Rangaswamy, supervisor of the N-400 unit responsible  
6 for overseeing the processing of N-400 applications from the initial receipt of the  
7 application through the receipt of the FBI name check clearances. Mr. Rangaswamy  
8 declares that Plaintiff filed his N-400 application on May 4, 2006 and that a request for  
9 a background security name check was submitted to the FBI on May 17, 2006. He also  
10 declares that the FBI name check remains pending and that continued monitoring of  
11 Plaintiff's N-400 application reveals that "the FBI query continues to return its current  
12 response of 'pending' or 'IP,' [and] this agency's hands are tied, and we are unable to  
13 move beyond this point." (Rangaswamy Decl. ¶6; Supp. Decl. ¶7).

14 Further, there appears to be no legal basis for the court to exercise subject matter  
15 jurisdiction over the action to compel Defendants to proceed with the naturalization  
16 interview. Defendants are precluded from proceeding with an applicant interview  
17 (generally considered the final step in the naturalization examination process), as  
18 requested by Plaintiff, until completion of the FBI background investigation. 8 C.F.R.  
19 §335.2(b). Moreover, 8 U.S.C. §1421(c) only permits judicial review after the USCIS  
20 has denied an application for naturalization and 8 U.S.C. §1447(b) permits judicial  
21 review only after the examination is complete. Neither event has yet to occur to  
22 empower this court to review Plaintiff's naturalization application or compel  
23 Defendants to afford him an examination interview.


24 In sum, the totality of the circumstances, in light of Defendants' evidentiary  
25 showing, fails to demonstrate the type of extraordinary circumstances which warrant  
26 mandamus relief. See Kildare, 325 F.3d at 1084. The manner in which background  
27 investigations are conducted are the types of discretionary functions not properly the  
28 subject of mandamus actions. The evidentiary record establishes that Defendants are

1 already doing precisely what Plaintiff requests this court to compel – process his  
2 naturalization application. Accordingly, the court concludes that it presently lacks  
3 mandamus jurisdiction over the Plaintiff’s complaint.

4 The court dismisses the present action for lack of subject matter jurisdiction.<sup>2</sup>  
5 The Clerk of Court is instructed to close the file.

6 **IT IS SO ORDERED.**

7 DATED: November 1, 2007

8   
9 Hon. Jeffrey T. Miller  
United States District Judge

10 cc: All parties  
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27 <sup>2</sup> The court is sympathetic to Plaintiff’s desire to naturalize. However, in light of modern-day  
28 security concerns, Defendants are under heightened legislative obligations to conduct thorough  
background investigations of applicants prior to adjudicating applications for naturalization - - even  
if such background investigations result in substantial delays in naturalization.